

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

IN THE MATTER OF:
PATRICIA Y. FRAY,

Debtor(s)

Case No: B-1080164 C-13D

OBJECTION BY STANDING TRUSTEE TO CONFIRMATION OF PLAN

NOW COMES Richard M. Hutson, II, Standing Trustee (“Trustee”) and respectfully objects to confirmation of the Debtor’s plan pursuant to 11 U.S.C. §1325(a) and shows unto the Court the following:

1. The Debtor filed a petition under Title 11 of the United States Code, Chapter 13, on January 29, 2010, in the United States Bankruptcy Court for the Middle District of North Carolina.
2. On January 29, 2010, Richard M. Hutson, II, was appointed as Trustee.
3. This Court has proper and personal jurisdiction of the subject matter hereof and over the parties pursuant to 28 U.S.C. §§151, 157 and 1334, and the Standing Order entered by the United States District Court for the Middle District of North Carolina and this is a core proceeding within 28 U.S.C. §157(b).
4. The petition filed by the Debtor proposes a monthly plan payment of \$1,464.00 per month for a period of at least 36 months. The Debtor’s plan does not require a dividend to unsecured creditors.
5. In Schedule “I”, the Debtor lists total net monthly income of \$2,549.74. In Schedule “J”, the Debtor lists expenses of \$3,042.74 per month, leaving insufficient excess income that can be devoted to the Chapter 13 plan.
6. The Trustee objects to confirmation of the plan in that the Debtor does not appear to have the ability to make payments under the plan as required by 11 U.S.C. §1325(a)(6). The Debtor has proposed monthly plan payments of \$1,464.00, which is more than the Debtor receives in excess income every month according to Schedules I and J. The plan is not feasible and cannot be confirmed on that basis.

WHEREFORE, the Trustee prays the Court for an Order as follows:

1. That the Debtor's plan not be confirmed in that the plan does not comply with 11 U.S.C. §1325(a)(6) and the case be dismissed for cause pursuant to 11 U.S.C. §1307; or
2. For such other and further relief as the Court may deem just or proper.

This the 30th day of March, 2010.

s/Benjamin E. Lovell

Benjamin E. Lovell
Attorney for the Trustee
State Bar No: 23266
P.O. Box 3613
Durham, N.C. 27702

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing document upon John T. Orcutt, Esq., 6616-203 Six Forks Rd., Raleigh, NC 27615, Patricia Y. Fray, 2610 Fayetteville St., Durham, NC 27707, and Michael D. West, Esq., U.S. Bankruptcy Administrator, PO Box 1828, Greensboro, NC 27402 by depositing a copy of same in the United States Mail, postage prepaid, and in the manner prescribed by Rule 5 of the Federal Rules of Civil Procedure.

This 30th day of January, 2010.

s/Benjamin E. Lovell

Benjamin E. Lovell, Esq.
Attorney for the Standing Trustee